In *Lumsden* v. *Inland Revenue Commissioners*,[3] at 925, Lord Parmoor said:

"A statute is the expression of the will of the Legislature, and it is the duty of the courts to give effect to the language in which the will of the Legislature has been expressed. It is not the function of courts of law to entertain questions of policy...."

He also cautioned at page 924 that "care must be taken that this [method of interpretation] is done not to make law, but only to expound it".

The Indian Supreme Court in *R.P. Kapur* v. *Pratap Singh Kairon*,[4] had decided that the Bill, the alterations made in it during its passage through the Committee, the Statement of Objects and Reasons and the Report of the Select Committee could not be legitimately taken into account in construing an absolutely clear provision.

In the circumstances, I hold that the Sessions Court has the jurisdiction to hear and decide the application under section 388(i) of the Criminal Procedure Code for bail by the accused (all over 18 years of age), who are charged under section 395 of the Penal Code. It must not be misunderstood that by the amendment to the Penal Code, the Legislature is viewing the offence of gang-robbery less seriously, at the expense of the administration of justice. With the amendment to the Subordinate Courts Act, 1948 (Revised 1972) by Act A434 with effect from July 1, 1978, the Sessions Court has been entrusted with increased criminal jurisdiction to try many offences hitherto triable by the High Court. The Sessions Court now has the jurisdiction to try all offences other than offences punishable with death (section 63) and may pass any sentence allowed by law other than the sentence of death (section 64), which falls within the jurisdiction of the High Court. Since the President of the Sessions Court has the jurisdiction to try the accused charged with gang-robbery, I see no reason why he should not in principle have the jurisdiction to perform the less arduous duty of deciding whether or not to grant bail pending trial before him. As Harun J. observes, "As a matter of principle, I think a court that has been conferred with jurisdiction to try a case should also be given discretionary powers to grant bail. This would be in keeping with the provisions of the Criminal Procedure Code, where magistrates possess the unfettered power to grant bail in all cases including cases not triable by them, except offences punishable with death or life imprisonment where only a judge may grant bail." (*Sulaiman bin Kadir* v. *Public Prosecutor*[5] at 38).

The law is clear that the High Court in its absolute discretion may under sections 388 and 389 of the Criminal Procedure Code grant bail to an accused person pending trial after his application for bail has been refused by the lower courts, even if an offence with which the accused is charged is punishable with death or imprisonment for life. The judgments of Harun J. in *Sulaiman bin Kadir* v. *Public Prosecutor*, and Gunn Chit Tuan J. in *Che Su binti Daud* v. *Public Prosecutor*,[6] are in point.

In cases where there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life, because of the seriousness of the offence charged, no bail should be granted, unless the accused satisfies the High Court that there are exceptional and special grounds justifying the granting of bail. In such an event, the burden is on the accused. In other cases of lesser charges, bail should, in my opinion, normally be granted as a matter of course, unless the prosecution can satisfy the court that in the interest of justice bail should not be granted. In all cases (whether bailable or not bailable) the High Court has the discretion to grant bail under sections 388 and 389 of the Criminal Procedure Code, but, as has often been said, that discretion must always be exercised judicially. The points for consideration in granting or refusing bail may be found on page 551 of *Mallal's* Criminal Procedure Code (4th Edition).

The amount of every bail bond should not be excessive but be reasonable in the circumstances of the case as being sufficient to secure the attendance of the person arrested or charged with an offence. An excessive bail bond may defeat the granting of bail as the accused may find difficulty in getting a bailor acceptable to the court. The reason arises from the principle and basis of our criminal law that the accused is presumed to be innocent until proven guilty.

The present application for bail is supported by the affidavits of the five accused. The Deputy Public Prosecutor did not file an affidavit in opposition. The affidavits of the accused disclose *inter alia* that their trial is some four months from now, that they will not abscond or tamper with prosecution witnesses and that they have no previous convictions. These to my mind merit the granting of bail. As to the bail bond, learned counsel for the accused suggested a figure of $3,000 each, while the learned Deputy suggested $5,000.

In the circumstances of the case, the accused should be granted bail in the sum of $4,000 each in one surety, the bail bond to be executed in the Sessions Court, Seremban.

Order accordingly.

Solicitors: *Gunaretnam & Co.*

LEE BOON KIAT v. NG SING

[O.C.J. (Wong Kim Fatt J.C.) December 14, 1981]
[Seremban — Civil Suit No. 18 of 1980]

Damages — Multiple injuries — Leg amputation — Paralysis of shoulder — Cost of artificial limb — Pain and suffering — Future earnings — Special damages.

On October 7, 1979, the plaintiff, Lee Boon Kiat, was riding motorcycle No. NH 1442 along the Linggi-Rantau Road, Negeri Sembilan, from the direction of Linggi towards Rantau when at or near 14¼ m.s. of the road, he was run into and knocked down by motor car No. MC 6166 driven by the defendant, Ng Sing, along the road travelling in the opposite direction. The defendant admitted liability. As a result of this accident the plaintiff suffered the following injuries:—

(a) Fracture of lower ⅓ of left femur.

(b) Laparotomy and surgical control of bleeding from the stomach wall.

(c) Compound comminuted fractures of the right tibia

and fibula with a large wound over the leg involving muscles and other deep structures resulting in the amputation of the right leg through the knee.

(d) Right brachial plexus injury with total paralysis of shoulder and elbow movements (with slight improvements subsequently) and partial paralysis of the fingers, and fracture of the right ulna.

Held: (1) the plaintiff should be given judgment with costs on the following awards:—

(i) Loss of actual past earnings	$ 5,355.00
(ii) Loss of partial past earnings	1,963.50
(iii) Cost of artificial limbs and maintenance	11,200.00
(iv) Pain and suffering and loss of amenities	71,000.00
(v) Loss of future earnings	40,000.00
(vi) Agreed special damages	8,716.00
Total	$138,234.50

(2) the awards on items (i) and (ii) and (vi) were with interest at 4% per annum from date of accident to judgment. Interest should also run on item (iv) from date of service of writ to judgment at 6% per annum. No interest was allowed on items (iii) and (v);

(3) as the injuries related to different parts and functions of the body, there was no overlapping and therefore no deductions should be made.

Cases referred to:-

(1) *Mahmod bin Kailan* v. *Goh Seng Choon & Anor.* [1976] 2 M.L.J. 239.

(2) *Lee Yew Hoe* v. *Lee Bock Huat* [1980] 2 M.L.J. 271.

(3) *Chia Poo King* v. *Tan Eng Chin* [1981] C.L.J. 130.

(4) *R.J. McGuinness* v. *Ahmad Zaini* [1980] 2 M.L.J. 304.

(5) *Abdul Samad* v. *Gammon & Christiani-Nielsen* [1962] M.L.J. 394.

(6) *Phua Tin Hang* v. *Teo Soh Choo* [1964] M.L.J. cx.

(7) *Yoong Leok Kee Corporation Sdn. Bhd.* v. *Chin Thong Thai* [1981] 2 M.L.J. 21, 22.

(8) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216.

CIVIL SUIT.

Chan Shick Chin for the plaintiff.

V.P. Nathan for the defendant.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: On October 7, 1979, the plaintiff, Lee Boon Kiat, was riding motorcycle No. NH 1442 along the Linggi-Rantau Road, Negeri Sembilan, from the direction of Linggi towards Rantau when at or near 14¼ m.s. of the road, he was run into and knocked down by motor car No. MC 6166 driven by the defendant, Ng Sing, along the road travelling in the opposite direction. As a result of this accident the plaintiff sustained serious injuries. Last year he filed the present suit against the defendant for negligence in driving the motor car, claiming damages, interest and costs.

As is usual in a running down case, the defendant denied negligence and pleaded that the accident was caused solely or substantially contributed to by the negligence of the plaintiff. However, the defendant, who called no evidence, admitted full liability at the commencement of the trial. The parties agreed that special damages for items (a) to (i) in the particulars of special damages be agreed at $8,716.

By consent of the parties, I have to decide on the awards for the following heads:

(1) Loss of actual past earnings;

(2) Loss of partial past earnings;

(3) Cost of artificial limbs and their maintenance;

(4) Pain and suffering and loss of amenities; and

(5) Loss of future earnings.

(1) *Loss of actual past earnings*

The average income of the plaintiff at the time of the accident while he was employed by Vanguard Engineering Industries Sdn. Bhd., based on his last drawn salary, allowance and overtime payment for 4 months (i.e. July to October 1979), was $357 per month. This is evidenced by the letter dated November 20, 1979 appearing on page 10 of the agreed bundle of documents. I therefore award 15 months at $357 per month for loss of actual past earnings for the period October 1979, to January 1981, totalling $5,355, which is marginally higher than the figure of $5,250 suggested by learned counsel for the defendant.

(2) *Loss of partial past earnings*

For loss of partial past earnings for 11 months from February to judgment in December 1981, I award a sum of $178.50 (i.e. at half monthly income) per month making a total of $1,963.50.

(3) *Cost of artificial limbs and their maintenance*

At the time of the accident the plaintiff (born on June 29, 1959) was slightly over 20 years old and by the time he was first fitted with an artificial limb in July 1980, he was about 21 years old. There is undisputed evidence that each artificial limb has a life span of 5 years and costs $1,700 and its maintenance will cost $300 per year. Therefore the cost of one artificial limb and its maintenance over a period of 5 years will be $3,200. Assuming that the plaintiff would live up to the age of 55 to 60 years, he would require 7 artificial limbs costing a total of $22,400 at current cost factors. The award of $16,000 suggested by plaintiff's counsel is too high while that of $6,500 suggested by defendant's counsel is far too low. Allowing for contingencies of life and the fact that the plaintiff is receiving a lump sum now, I think it fair to assess for the purpose of my award the cost of the 7 artificial limbs and their maintenance at a global sum of $11,200, which, together with the interest earned from its fixed deposit account, will be adequate to cover the total cost over the years. From the evidence it is unusual for the user of an artificial limb to have one spare set of artificial limb while he has one in actual use. Therefore the claim for a spare set is not allowed.

(4) *Pain and suffering and loss of amenities*

The awards are considered separately under items (a) to (d) below.

From the medical report dated September 9, 1980, of Dr. Mohd. Nasir Abu Samah of the General Hospital, Seremban, and the specialist reports of Dr. Mahmood Merican dated December 8, 1979, and November 18, 1980, the plaintiff's injuries, for the purpose of his claim, may be listed as follows:

(a) Fracture of lower ⅓ of left femur.

(b) Laparotomy and surgical control of bleeding from the stomach wall.

(c) Compound comminuted fractures of the right tibia and fibula with a large wound over the leg involving muscles and other deep structures resulting in the amputation of the right leg through the knee.

(d) Right brachial plexus injury with total paralysis of shoulder and elbow movements (with slight improvements subsequently) and partial paralysis of the fingers, and fracture of the right ulna.

Items (a) and (b) above presented no difficulty as the quantifications of both counsel were the same. I therefore award $4,500 for fracture of the left femur and $4,000 for laparotomy.

As for item (c) above it was suggested by counsel for the defendant that the award should be $35,000. Counsel cited the case of *Mahmod bin Kailan* v. *Goh Seng Choon & Anor.*,[1] in support of his contention. It must be noted that that case was decided in 1976 when the social and economic conditions were different. In more recent years, as in the case of *Lee Yew Hoe* v. *Lee Bock Huat*[2] and the case of *Chia Poo King* v. *Tan Eng Chin*,[3] the awards for similar injuries have tended to increase, partly owing to inflation. I would therefore fully accept the suggestion of learned counsel for the plaintiff and award the sum of $40,000 for the injuries. It may be noted that by way of comparison Roberts C.J. in the Brunei case of *R.J. McGuinness* v. *Ahmad Zaini*,[4] awarded a sum of B$50,000 for pain and suffering and loss of amenities for an above-knee amputation.

It will be helpful to refer to some past decisions in considering the award for item (d) above. In 1962 in *Abdul Samad* v. *Gammon & Christiani-Nielsen*,[5] Gill J. (as he then was) awarded $12,500 for the plaintiff, a 32-year-old ex-tailor employed by the defendants as a winch driver. He suffered multiple lacerations of right hand and wrist involving wrist joint, a compound fracture of the lower end of the ulna bone and the two main arteries of the hand, the median nerve and flexor muscle were severed and two of the small bones of the wrist had been detached. As a result of these injuries the plaintiff had a claw hand. Then in 1964 in *Phua Tin Hang* v. *Teo Soh Choo*,[6] the plaintiff was 19 years at the time of accident, when he was earning $130 a month as a food caterer assistant. He sustained lacerated wound 2½" deep which cut all the flexor tendons and nerves of the left forearm, complete ulnar and medial nerve paralysis leaving a claw hand, and lacerated wound in the mucous membrane of the mouth with mandible exposed. The effect of the injury was that he was virtually without the use of the left hand. The Singapore High Court awarded $12,500 for loss of amenities, pain and suffering.

In the present case before me, the seriousness of injuries of the plaintiff is comparable to that of the injuries of the plaintiffs in the above two reported cases, the common factor in all these three cases being the loss of the use of one hand. Bearing in mind that the awards in the first two cases were made over seventeen years ago and the effects of inflation over these years, the sum of $12,500 is by current standard on the low side. Counsel for the defendant submitted that a figure of $15,000 would be fair while counsel for the plaintiff urged me to award $25,000. Taking all these factors into consideration, I am of the view that an award of $22,500 is fair and reasonable.

(5) *Loss of future earnings*

I now come to the question of the assessment of loss of future earnings. It is invariably a difficult and somewhat speculative exercise for the trial judge as he has to take into account the imponderables of life in the future based on certain known and presumed facts at present. Admittedly, from the very nature of the exercise, it is one which admits of no mathematical precision.

The plaintiff was examined by Dr. Mahmood Merican, Consultant Orthopaedic Surgeon, whose opinion is as follows:

"This man suffered from severe injuries, and earlier during his treatment, his life was in danger, at first from the injuries themselves, then from the gangrene and infection from the right leg and then from the bleeding from the stomach.

He has severe disabilities as described above especially the paralysis of the right upper limb and amputation of the right leg.

The paralysis has improved slightly over the last few months and active flexion at the right elbow has been improved by the operation.

The present disabilities are likely to be permanent.

He is permanently incapacitated from work except of a sedentary nature and even in this respect he is limited by the partial paralysis of the right upper limb. He is now unable to write with the right hand or to carry out activities with the right hand which requires strength or accuracy of movements."

Counsel for the plaintiff submitted that since the plaintiff had lost the right leg and at the same time the use of the right arm, future loss of earnings should be based on 75% (i.e. $330) of his present earning capacity of what counsel estimated to be $450 per month. Over 25 years' purchase, the award should be $55,800. On the other hand, counsel for the defendant submitted that in the circumstances of the case, 50% (i.e. $180) of what the plaintiff was earning should be used over 22 years' purchase, thus yielding a rounded sum of $28,500.

In calculating the loss of future earnings, all relevant circumstances should be taken into account, including the age of the plaintiff, his occupation and income, the consequences of his injuries, and whether or not he has taken any reasonable steps to mitigate his loss. The evidence of Mr. Lai Choo Peng, the managing director of Vanguard Industries Sdn. Bhd., the plaintiff's employers, shows that in 1981 the plaintiff's salary would be $350 and with the increments and overtime allowance the total monthly income of the plaintiff would in 1981 be in the region of $400, a figure which appears fair and reasonable to me. Mr. Lai stated that if he were to employ a new storekeeper, his salary would be $400 per month. I have no reason to doubt that the plaintiff's work was satisfactory to his employers. The evidence also shows that the plaintiff did not mitigate his loss. In cross-examination the plaintiff was honest enough to say that after his discharge from Pantai Medical Centre,

he did not go back to his former employers. Neither did he make any effort to seek employment in Kuala Lumpur or his home town of Pengkalan Kempas. He also stated that he could not write with his right hand and I accept that in his post-accident condition he could not do the work of a store-keeper or any work of a similar nature satisfactorily. However, there is specialist evidence that he could do some sedentary work. Taking all these factors into consideration, including the fact that the plaintiff has not mitigated his loss (see *Yoong Leok Kee Corporation Sdn. Bhd.* v. *Chin Thong Thai*[7] at 22) and that the plaintiff will be getting a lump sum now for the whole of his working life (*Murtadza bin Mohamed Hassan* v. *Chong Swee Pian*[8]), I am of the view that, based on a sum of $240 (i.e. after discounting 40% of $400) per month over 23 years' purchase (on the basis that the plaintiff's useful working life would end at 55 years), the proper award for loss of future earnings should be $38,847.09, rounded to $40,000.

Overlapping

In giving these awards, as the injuries relate to different parts and functions of the body, I am satisfied that there is no question of overlapping or duplication. Consequently, no deductions should be made.

The total awards

The total awards are as follows:

(1) Loss of actual past earnings ...	$	5,355.00
(2) Loss of partial past earnings ...		1,963.50
(3) Cost of artificial limbs and maintenance ...		11,200.00
(4) Pain and suffering and loss of amenities ...		71,000.00
(5) Loss of future earnings ...		40,000.00
(6) Agreed special damages ...		8,716.00
Total		$138,234.50

There will be judgment for the plaintiff in the sum of $138,234.50 with costs to be taxed.

The awards on items (1), (2) and (6) are with interest at 4% per annum from date of accident (i.e. October 7, 1979) to judgment. Interest should also run on item (4) from date of service of writ to judgment at 6% per annum. No interest is allowed on items (3) and (5).

Claim allowed.

Solicitors: *Murphy & Dunbar; V.P. Nathan & Co.*

AR. PL. PALANIAPPA CHETTIAR v. PL. AR. LETCHUMANAN CHETTIAR & ANOR.

[O.C.J. (Wong Kim Fatt J.C.)
November 23, 24 & December 12, 1981]
[Seremban — Civil Suit No. 226 of 1981]

Land Law — Contracts for purchase of land — Specific performance — Declaration — Injunction against Registrar of Titles — Power of court to order Registrar to enter Registrar's caveat — Prevention of fraud — Damages — Balance of convenience.

In this case, the plaintiff sued the first defendant, who was the executor of the estate of a deceased person (late father of the plaintiff) for *inter alia* a declaration that the transfer executed by the first defendant in favour of the second defendant for valuable consideration in respect of a certain piece of land in Port Dickson to be null and void and of no effect on the ground of fraud of the first defendant. After filing his writ and statement of claim, the plaintiff applied by *ex parte* summons-in-chambers for an injunction against the Registrar of Titles restraining him from registering the transfer in favour of the second defendant company which had duly completed the contract. The plaintiff also applied for an order that the Registrar (not made a party) do enter a Registrar's caveat against the title to the land in question to prevent registration of the transfer of the land in favour of the second defendant.

Held, dismissing the application: (1) an injunction does not lie against the Registrar of Titles, who has a statutory duty under the National Land Code to register the transfer properly presented before him for registration;

(2) the High Court has the power to order the Registrar to enter a Registrar's caveat to prevent fraud or improper dealings in land, whether or not the Registrar is a party to the proceedings;

(3) on the facts, the balance of convenience clearly lies in not ordering the Registrar to enter a Registrar's caveat.

Cases referred to:-

(1) *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509; [1980] 1 All E.R. 213.

(2) *Seet Soh Ngoh* v. *Venkateswara Sdn. Bhd. & Anor.* [1976] 1 M.L.J. 242.

(3) *Registrar of Titles, Johore, Johore Bahru* v. *Temenggong Securities Ltd.* [1976] 2 M.L.J. 44; [1976] 2 W.L.R. 951; [1977] A.C. 302.

SUMMONS-IN-CHAMBERS.

G. Vadiveloo for the plaintiff/applicant.

Atma Singh Gill for the first defendant.

Joseph Chia En Tet for the second defendant.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: The application of the plaintiff made by summons-in-chambers was dismissed by me on November 24, 1981. Learned counsel for the plaintiff indicated that he had instructions to appeal against my decision in chambers to the Federal Court. I said I would give my written judgment and I do so now.

In this case, the plaintiff sues the first defendant, who is the executor of the estate of one PL. AR. Arunasalam Chettiar s/o Palaniappa Chettiar (the late father of the plaintiff) for a declaration that the transfer executed by the first defendant in favour of the second defendant in respect of the undivided ½ share of a land held under C.T. 4252 for Lots 905 and 906 ("the land"), Town and District of Port Dickson, to be null and void and of no effect. The plaintiff in his statement of claim also seeks the following reliefs: (1) specific performance of an alleged agreement between the plaintiff and the first defendant contained in the letters dated July 23, 1981, and July 29, 1981, relating to the land; (2) an injunction against the Registrar of Titles restraining him from registering the transfer of the land in favour of the second defendant; and (3) an order that the Registrar do enter a Registrar's caveat against the title to the land. In the alternative, the plaintiff claims damages for breach of contract against the defendants. Particulars of the alleged fraud by the first defendant are given in the statement of claim.